



New South Wales

SUPREME COURT RULES (AMENDMENT No. 322) 1998

1. These rules are made by the Rule Committee on 20 July 1998.
2. The Supreme Court Rules 1970 are amended as follows:
 - (a) Part 1 rule 8
In alphabetical order insert:
"Commercial List" means the list to which Part 14 applies.
"Construction List" means the list to which Part 14A applies.
 - (b) Part 12 rule 7
Omit "Common Law Division, the Equity Division or the Commercial Division" and insert instead "Common Law Division or the Equity Division.".
 - (c) Part 14
Omit the Part and insert instead:

PART 14—Commercial List

Assignment of business and entry in Commercial List

1. (1) Subject to subrule (2), proceedings in the Court:

- (a) arising out of commercial transactions: or
- (b) in which there is an issue that has importance in trade or commerce.

are assigned to the Equity Division and may, subject to this part, be entered in the Commercial List ("the List").

(2) Subrule (1) does not apply to any proceedings:

- (a) assigned by the Act or by or in accordance with the rules or by or under any other Act to the Court of Appeal, the Equity Division (other than proceedings assigned by this Part or with a view to entry in the List), the Admiralty Division, the Family Law Division, the Protective Division, the Probate Division, the Administrative Law Division or the Criminal Division;
- (b) which may be entered in the Construction List: or
- (c) for defamation

(3) In subrule (1), "issue" includes any question or issue in any proceedings, whether of fact or law or both, and whether raised by pleadings, agreement of parties or otherwise.

Application of rules

2. Part 36 rule 3 (2) (evidence by affidavit), rule 8 (plans, etc.) and Schedule F forms 6 and 7 (summons) shall not apply to:

- (a) proceedings entered in the List; or
- (b) a summons filed in the Equity Division that contains a requirement under rule 6.

Appeals

3. Part 51A rules 4 and 5 and 10–13 (which relate to appeals to the Court) shall not apply to proceedings entered, or intended to be entered, in the List.

Commercial Arbitration Act 1984

4. Part 72A rules 2 and 6 (which relate to applications and appeals under the Commercial Arbitration Act 1984) shall not apply in proceedings entered, or intended to be entered, in the List.

Commencement of proceedings

5. Notwithstanding Part 4 rule 2, where a plaintiff requires any proceedings to be entered in the List under rule 6, he or she shall commence proceedings by summons in the Equity Division.

Entry in the List on commencement of proceedings

6. Where a plaintiff adds "Commercial List" next under the heading and title on his or her summons in proceedings in the Equity Division, the proceedings shall be entered in the List without any order for entry.

Removal from the List

7. (1) Where any proceedings are entered in the List, the Court, on the application of a party or of its own motion, may, if it is satisfied that it is proper to do so, order that the proceedings be removed from the List, and may give such further directions as to the continuance of the proceedings as it thinks fit.

(2) A party who wants an order under subrule (1) shall move on notice for that order on or before the first hearing for directions conducted in accordance with the practice of the Court.

Appeal by leave

8. An appeal shall not lie to the Court of Appeal, except by leave of the Court of Appeal, from an order that any proceedings be entered in the List.

Court expert

9. (1) The Court shall not, in proceedings entered in the List, obtain the assistance of a person (an "adviser") under Part 39 rule 7:

- (a) where all parties object; or
- (b) where one party or some parties consents or consent—without giving all parties an opportunity to be heard.

(2) So far as practicable, the Court shall, in proceedings entered in the List, endeavour to arrange for the adviser to be present, either throughout the hearing or during the evidence and addresses relevant to his or her assistance to the Court and upon inspection, relevant to that assistance, of any place, process or thing under section 53 of the Evidence Act (which relates to a view).

Bulk transfer and entry orders

10. (1) The Court may of its own motion, by a single order, order that all proceedings, or all proceedings of a specified type, be transferred from the Commercial Division to the Equity Division.

(2) The Court may of its own motion, by a single order, order that all proceedings of a specified type be entered in the Commercial List.

(3) Part 41 rule 11 (1) shall not apply to an order to which subrule (1) or subrule (2) applies.

(d) Part 33 rule 5 (4)

Omit the subrule and insert instead:

(4) This rule does not apply to proceedings entered in the Commercial List or the Construction List.

(e) Part 49 rule 1 (1)

After "Division" insert "and does not apply to proceedings entered in the Commercial List"

(f) Part 52A rule 9 (1)

Omit the subrule and insert instead:

(1) Where before the conclusion of any proceedings, other than proceedings entered in the Commercial List or the Construction List, the Court makes an order for the payment of costs or a motion is refused with costs, the costs shall not, unless the Court otherwise orders, be payable until the conclusion of the proceedings.

1998 No 450

Supreme Court Rules (Amendment No 322) 1998

- (g) Part 52A rule 33 (1) (a)
Omit "the Commercial Division" and insert instead "entered into the Commercial List".
- (h) Part 63 rule 6 (2)
After "Division" insert "(other than proceedings entered in the Commercial List)".
- (i) Part 72A rule 1A (1) (b)
Omit "Commercial Division" and insert instead "Equity Division for entry in the Commercial List".
- (j) SCHEDULE E Part 1
After the matter relating to Part 11, insert:
Part 14:

Rule (1) (b)..... Order for transfer of proceedings to Equity Division and entry in Commercial List

3 The amendments contained in paragraph 2 shall commence on 1 September 1998.

EXPLANATORY NOTE

(This note does not form part of the rules).

The object of the amendments contained in paragraph 2 is to restructure the Court to ensure that it best orders the management of business before the Court and maximises the utilisation of judicial resources and, for this purpose, to transfer the work of the Commercial Division to the Equity Division, where it is to be included in a Commercial List and to make amendments of a consequential and ancillary nature.

M.A. Blay, The Secretary of the Rule Committee